



Billing Code 4510–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N151; FXES11120000–145–FF08ECAR00]

**Endangered and Threatened Wildlife and Plants; NewMark Merrill Companies
Incidental Take Permit Application and Proposed Low-Effect Habitat Conservation
Plan and Associated Documents; San Bernardino County, CA**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from NewMark Merrill Companies (applicant) for a 5-year incidental take permit (permit). The application includes the applicant's proposed habitat conservation plan (HCP), as required by the Endangered Species Act of 1973, as amended (Act). If approved, the permit would authorize incidental take of the endangered Delhi Sands flower-loving fly in the course of routine construction activities associated with the construction of a commercial retail development bounded by West San Bernardino

Avenue, Riverside Avenue, and Willow Avenue in the City of Rialto, California. We invite public comment on the permit application and proposed HCP, and on our preliminary determination that the HCP qualifies as “low-effect” for a categorical exclusion under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

DATES: To ensure consideration, please send your written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: *Obtaining Documents:* You may request a copy of the incidental take permit application, proposed HCP, and associated documents by e-mail, telephone, fax, or U.S. mail (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Please send your requests or comments by any one of the following methods, and specify “Walmart Commercial Retail HCP” in your request or comment.

Submitting Comments: You may submit comments or requests for more information by any of the following methods:

E-mail: ken_corey@fws.gov. Include “Walmart Commercial Retail HCP” in the subject line of your message.

Telephone: Kennon A. Corey, Palm Springs Fish and Wildlife Office, 760–322–2070.

Fax: Kennon A. Corey, Palm Springs Fish and Wildlife Office, 760–322–4648,
Attn.: Walmart Commercial Retail HCP.

U.S. Mail: Kennon A. Corey, Palm Springs Fish and Wildlife Office, Attn.:
Walmart Commercial Retail HCP, U.S. Fish and Wildlife Service, 777 East Tahquitz
Canyon Way, Suite 208, Palm Springs, CA 92262.

In-Person Viewing or Pickup of Documents, or Delivery of Comments: Call 760–
322–2070 to make an appointment during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kennon A. Corey, Assistant Field
Supervisor, Palm Springs Fish and Wildlife Office; telephone 760–332–2070. If you use
a telecommunications device for the deaf (TDD), please call the Federal Information
Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

The applicant, NewMark Merrill Companies, requests an incidental take permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) as a result of minor disturbances to habitat the subspecies uses for breeding, feeding, and sheltering. Take of Delhi Sands flower-loving fly would be incidental to the applicant's routine activities associated with the construction of a commercial retail facility in the City of Rialto, San Bernardino County, California. We published a final rule to list the Delhi Sands flower-loving fly as endangered on September 23, 1993 (58 FR 49881). A 5-year

review of the species was published in March 2008.

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the “take” of wildlife species listed as endangered or threatened. Take of listed wildlife is defined under the Act as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in any such conduct” (16 U.S.C. 1538). “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). Under limited circumstances, we may issue permits to authorize incidental take of listed wildlife species, which the Act defines as take that is incidental to, and not the purpose of, the carrying out of otherwise lawful activities.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. In addition to meeting other criteria, activities covered by an incidental take permit must not jeopardize the continued existence in the wild of federally listed wildlife or plants.

Applicant’s Proposal

The applicant requests a 5-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) as a result of the building of a commercial retail

facility which would permanently impact 2.4 acres of low-quality habitat for the subspecies. The take would be incidental to the applicant's routine construction activities associated with the construction of the commercial retail facility, south of West San Bernardino Avenue, east of South Willow Avenue, and west of South Riverside Avenue, in the City of Rialto, San Bernardino County, California.

A portion of the commercial retail facility project is on Delhi Sands soils. This soil type, which consists of fine wind-blown sand deposits, along with sparse native shrubs and annual plants, defines the Delhi Sands flower-loving fly habitat. A single male Delhi Sands flower-loving fly was detected on the site during pre-project surveys. Less than 5 percent of the species' historic range is left, found in a few disjunct locations in southwestern San Bernardino and northwestern Riverside Counties. Development and exclusion by invasive plant species continue to be threats to this species. Conservation banks, like the Colton Dunes Conservation Bank, are this species' best chance at recovery.

To mitigate for take of the Delhi Sands flower-loving fly at the proposed project site, the applicant proposes to mitigate for the permanent take of 2.4 acres of low quality habitat by preserving 2 acres of habitat occupied by the subspecies. The applicant's proposed HCP also contains the following proposed measures to minimize the impact to the habitat adjacent to the street improvements:

- Fence work areas to exclude personnel from areas where habitat may be impacted.
- Require environmental awareness training for all workers.

- Confine construction activities to the project site and existing developed areas.
- Require that all construction activities be completed during the time period October through June only (i.e., outside of the Delhi Sands flower-loving fly flight season, with a 2-week buffer on either side).

Proposed Habitat Conservation Plan Alternatives

In the proposed HCP, the applicant considers alternatives to the taking of Delhi Sands flower-loving fly under the proposed action. Our proposed action under the National Environmental Policy Act (NEPA) of 1969 is to issue an incidental take permit to the applicant, who would implement the HCP. If we approve the permit, take of Delhi Sands flower-loving fly would be authorized for the applicant's routine construction activities associated with the development. The applicant's proposed HCP identifies a no-action alternative that would not result in incidental take of Delhi Sands flower-loving fly. However, the no-action alternative would not contribute to the applicant's plans for expanding Walmart's retail opportunities in the Rialto area. In addition, we consider that conserving lands in the Colton Dunes Conservation Bank is of higher conservation value than simply avoiding impacts at the proposed project site. The habitat at the proposed project site is degraded and fragmented from other habitat by roads. By contrast, the Conservation Bank is a 150-acre area of high-quality habitat occupied by the Delhi Sands flower-loving fly which is actively managed for the subspecies and is contiguous to other conservation lands.

Our Preliminary Determination

We invite comments on our preliminary determination that our proposed action, based on the applicant's proposed activities, including the proposed minimization and mitigation measures, would have a minor or negligible effect on Delhi Sands flower-loving fly, and that the HCP qualifies as "low effect" as defined by our *Habitat Conservation Planning Handbook* (November 1996).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

As more fully explained in our environmental action statement and associated low-effect screening form, the applicant's proposed HCP qualifies as a low-effect HCP for the following reasons:

- The project would have minor or negligible effects on the Delhi Sands flower-loving fly because the low-quality impacted area would be small in size, would be mitigated by the purchase of conservation credits in the Colton Dunes Conservation Bank, and would not affect the continued viability of the Delhi

Sands flower-loving fly in the Colton Recovery Unit.

- The project would have minor or negligible effects on other environmental resources or values because it is a highly disturbed site with no other known sensitive species or resources.
- Impacts of the HCP would not result, over time, in cumulative effects to other significant environmental values or resources, because it is a relatively small infill project and mitigation measures were developed and will be implemented as part of project approval by the City of Rialto to address the identified environmental effects. The mitigation measures include preservation of 2 acres of occupied Delhi Sands flower-loving fly habitat within the Colton Dunes Conservation Bank to offset impacts to the subspecies.

Therefore, our proposed issuance of the requested incidental take permit qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1, 516 DM 6 Appendix 1, and 516 DM 8.5(C)(2)). Based on our review of public comments that we receive in response to this notice, we may revise this preliminary determination.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act. We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by conducting an internal

Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of Delhi Sands flower-loving fly.

Public Comments

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

G. Mendel Stewart,
Field Supervisor,
Carlsbad Fish and Wildlife Office,
Carlsbad, California.

[FR Doc. 2014-17407 Filed 07/23/2014 at 8:45 am; Publication Date: 07/24/2014]